Schoop, 81 Mo. App. 539; *Saveland* v *Green,* 40 Wis. 431; *Washington &c. Tel. Co.* v. *Hobson,* 15 Gratt. 122; *Tyler* v. *Western Union Tel. Co.,* 60 Ill. 421, 12 Am. Rep. 38; *Haubelt Brothers* v. *Rea & Page Mill Co.,* 77 Mo. App. 672.

ESTATES—DEVISE OF CONTINGENT REMAINDER.—A. M. M. by deed conveyed property to his brother A. J. M. in trust to pay the income therefrom to A. M. M. for life, and should A. M. M. leave children or grandchildren, the principal to go to them at A. M. M.'s death, but should A. M. M. die without child or grandchild living, then to A. J. M. in fee. A. J. M. died in 1894 after having made a will wherein (after having made some minor bequests), he devised all the rest and residue of his estate, "whether in possession, remainder, or reversion, or in expectancy" to his wife. A. M. M. died in 1915 without child or grandchild. *Held,* the contingent remainder in A. J. M. passed by his will, though he died before the contingency happened. *Myers* v. *McClurg* (Md. 1916), 98 Atl. 491.

From the cases cited in argument of the principal case it seems that attorneys often fail to distinguish between contingent remainders where the person to take is uncertain and contingent remainders where the event is uncertain. *L'Armour* v. *Rich,* 71 Md. 369, 18 Atl. 702; *Cherbonnier* v. *Goodwin,* 79 Md. 55, 28 Atl. 894. Where the person is uncertain, as in a gift to A with remainders to such children of A as should be living at a definite future day, it has been held that no one of A's children before that day should have a devisable interest *Doe d. Calkin* v. *Tomkinson,* 2 M. & S. 165, 105 Eng. Rep. 344, an early case, followed by the majority of courts in this country, which following *Jones* v. *Roe,* 3 T. R. 88, 1 H. Bl. 30, 100 Eng. Rep. 470, 126 Eng. Rep. 20 have allowed a contingent remainder-man to devise his remainder when the uncertainty was as to the event and not as to the person. *Morse* v. *Propcr,* 82 Ga. 13, 8 S. E. 625; *Collins* v. *Smith,* 105 Ga. 525, 31 S. E. 449; *Jenkins* v. *Bonsal,* 116 Md. 629, 82 Atl. 229; *Ingilby* v. *Amcotts,* 21 Beav. 585; *Loring* v. *Arnold,* 15 R. I. 428, 8 Atl. 335; *Clark* v. *Cox,* 115 N. C. 93, 20 S. E. 176; *Kenyon* v. *See,* 94 N. Y. 563; *Barnitz* v. *Casey,* 7 Cranch 469, 3 L. Ed. 403; *Winslow* v. *Goodwin,* 7 Metc. (Mass.) 363. Some courts, however, have failed to distinguish between the two sorts of cases and have held that a contingent remainder is devisable though it is uncertain as to the person who is to take. *Rembert* v. *Evans,* 86 S. C. 445, 68 S. E. 659; *Allen* v. *Watts,* 98 Ala. 384, 11 So. 646; *Young* v. *Young,* 89 Va. 675, 23 L. R. A. 642 (dictum). Provided, of course, that if the event upon which the contingent estate was to vest never happens and becomes impossible of happening, any attempt that has been made to devise it is without force or effect. *Eckle* v. *Ryland,* 256 Mo. 424, 165 S. W. 1035. See article in 9 Col. L. Rev. 546.

EVIDENCE—EFFECT OF HEARSAY UNDER WORKMEN'S COMPENSATION ACT.—Plaintiff sued under the Workmen's Compensation Act to recover for the death of her intestate, an ice-wagon driver employed by defendant company. Plaintiff claimed that the death resulted from injuries received by decedent

when a heavy cake of ice slipped and fell on him when he was unloading it from his wagon; three witnesses for defendant testified that they were present at the time and place of the alleged accident, and that no such accident happened to decedent; the only evidence to support plaintiff's version was the testimony of plaintiff herself, a physician, and one other person, to the effect that decedent had told them that he was injured in the manner claimed by plaintiff. The Workmen's Compensation Commission made an award for plaintiff based on this hearsay testimony, which it considered to be admissible under § 68 of the Compensation Act, providing that the Commission "shall not be bound by common law or statutory rules of evidence * * *" but shall conduct its hearings "in such manner as to ascertain the substantial rights of the parties." The award was sustained in the Supreme Court (169 App. Div. 450, 155 N. Y. Supp. 1) and defendant company appealed to the Court of Appeals. *Held,* (SEABURY and POUND, JJ. dissenting) that while hearsay evidence is clearly admissible under § 68, the only "substantial evidence" before the Commission was the testimony of defendant's witnesses to the effect that there was no such accident as was claimed by plaintiff; that under the circumstances the evidence as to decedent's declarations was no evidence, and that the claim for compensation should accordingly be dismissed. *Carroll* v. *Knickerbocker Ice Co.* (N. Y. 1916), 113 N. E. 507.

For a discussion of the principles involved in this case, see comment on the decision of the same case in the Appellate Division of the Supreme Court in 14 MICH. L. REV. 158.

EVIDENCE—VALUE OF CROP DESTROYED BY HAIL.—Plaintiff's crops were insured with defendant company against loss by hail. Plaintiff's small grain was about ten inches high and the corn about six inches high when the hail injured it. Evidence of the crop yield in the neighboring fields was *held* to be admissible to establish the amount of loss, there being also evidence that the conditions there were practically the same before loss. *Stockwell* v. *German Mut. Ins. Assn. of LeMars* (S. D. 1916), 158 N. W. 450.

The method of proof of loss on growing crops is in a state of confusion. One line of cases holds that witnesses, usually farmers especially conversant with the crop-producing qualities of the particular locality in question, will be allowed to give their opinion as to the value of the matured crop of the field in question, basing such opinion on the usual yield of the land in seasons similar to that in which the loss occurred. *Railway Company* v. *Lyman,* 57 Ark. 512, 22 S. W. 170; and *St. Louis et R. R. Co.* v. *Yarborough,* 56 Ark. 612, 20 S. W. 515; *Sayers* v. *M. P. R. Co.,* 82 Kan. 123, 107 Pac. 641, 27 L. R. A. N. S. 168. Another line of cases decides the amount of loss entirely upon opinion evidence of so-called expert witnesses, laying down no particular method by which they are to reach their conclusions, but leaving it entirely to the witness to estimate the probable yield had no loss occurred, without stating the foundations of his estimate. These cases go upon the theory that it is a situation that cannot be so adequately described by a witness that a jury could draw an intelligent conclusion, hence allow opinion